

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health and Life Insurance and Managed Care
(Amendment)

806 KAR 12:010. Advertising of accident and sickness benefits.

RELATES TO: KRS 304.3-240, 304.12-010, 304.12-020, 304.12-060, 304.12-120, 304.12-130

STATUTORY AUTHORITY: KRS 304.2-110(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as established in KRS 304.1-010. This administrative regulation clarifies the minimum standards for advertising as established in KRS 304.12-010 and 304.12-020.

Section 1. Definitions. (1) "Exception" means:

(a) Any provision in a policy in which coverage for a specified hazard is [~~entirely~~] eliminated; or [~~and~~]

(b) A statement of risk not assumed under the policy.

(2) "Limitation" means any provision that restricts coverage under the policy other than an exception or a reduction.

(3) "Reduction" means:

(a) Any provision that reduces the amount of the benefit; and

(b) A risk of loss is assumed but payment upon the occurrence of the loss is limited to some amount or period less than what would be otherwise payable had the reduction clauses not been used.

Section 2. Scope. The provisions of this administrative regulation shall be expressly limited to a life or health insurer issuing any policy as defined in Section 3(2) of this administrative regulation, and shall apply to individual and group accident and sickness insurance advertisements.

Section 3. (1) An insurance advertisement for the purpose of this administrative regulation shall include:

(a) Printed and published material and descriptive literature of an insurer used in newspapers, magazines, radio and TV scripts, and billboards and similar displays;

(b) Descriptive literature and sales aids of all kinds issued by an insurer for presentation to members of the public, including circulars, leaflets, booklets, depictions, illustrations, and form letters; and

(c) Prepared sales talks, presentations, and material for use by agents and brokers, and representations made by agents and brokers.

(2) A policy for the purpose of the advertisement regulations shall include any policy, plan, certificate, contract, agreement, statement of coverage, rider, or endorsement that provides accident or sickness benefits or medical, surgical, or hospital expense benefits, whether on a cash indemnity, reimbursement, or service basis, except if issued in connection with another kind of insurance other than life, and except disability and double indemnity benefits included in life insurance and annuity contracts.

(3) Insurer for the purpose of the advertisement regulations shall include any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds, fraternal benefit society, and any other legal entity engaged in the advertisement of a policy.

Section 4.~~[Section 3.]~~ This administrative regulation shall apply to agents and brokers to the extent that an agent and broker are responsible for the advertisement of any policy.

Section 5.~~[Section 4.]~~ (1) Advertisements shall be truthful and not misleading in fact or in implication. Words or phrases, the meaning of which is clear only by implication or by familiarity with insurance terminology, shall not be used.

(2) Words, phrases, or illustrations shall not be used in a manner that misleads or has the capacity and tendency to deceive as to the extent of any policy benefit payable, loss covered, or premium payable. An advertisement relating to any policy benefit payable, loss covered, or premium payable shall be sufficiently complete and clear to avoid deception or the capacity and tendency to deceive.

(a) The words and phrases "all," "full," "complete," "comprehensive," "up to," "as high as," "this policy will pay your hospital and surgical bills," or "this policy will replace your income," or similar words and phrases shall not be used so as to exaggerate any benefit beyond the terms of the policy, and may be used only in a manner that fairly describes a benefit.

(b) A policy covering only one (1) disease or a list of specified diseases shall not be advertised as to imply coverage beyond the terms of the policy. Synonymous terms shall not be used to refer to any disease as to imply broader coverage than is the fact.

(c) The benefits of a policy that pays varying amounts for the same loss occurring under different conditions or that pays benefits only if a loss occurs under certain conditions shall not be advertised without disclosing the limited conditions under which the benefits referred to are provided by the policy.

(d) Phrases similar to "this policy pays \$1,800 for hospital room and board expenses" shall be incomplete without indicating the maximum daily benefit and the maximum time limit for hospital room and board expenses.

(3) If an advertisement refers to any dollar amount, period of time for which any benefit is payable, cost of policy, or specific policy benefit or the loss for which a benefit is payable, it shall also disclose those exceptions, reductions, and limitations affecting the basic provisions of the policy without which the advertisement would have the capacity and tendency to mislead or deceive.

(a) If a policy contains a time period between the effective date of the policy and the effective date of coverage under the policy or a time period between the date of coverage under the policy or a time period between the date a loss occurs and the date benefits begin to accrue for the loss, an advertisement shall disclose the existence of the periods.

(b) An advertisement shall disclose the extent to which any loss is not covered if the cause of the loss is traceable to a condition existing prior to the effective date of the policy. If a policy does not cover losses traceable to preexisting conditions, the advertisement of the policy shall not state or imply that the applicant's physical condition or medical history will not affect the issuance of the policy or payment of a claim. This shall limit the use of the phrase "no medical examination required" and similar phrases.

Section 6.~~[Section 5.]~~ An advertisement that refers to renewability, cancelability, or termination of a policy, that refers to a policy benefit, or that states or illustrates time or age in connection with eligibility of applicants or continuation of the policy, shall disclose the provisions relating to renewability, cancelability, and termination and any modification of benefits, losses cov-

ered or premiums because of age or for other reasons, in a manner that shall not minimize or render obscure the qualifying conditions.

Section 7.~~[Section 6.]~~ All information required to be disclosed by this administrative regulation shall be stated conspicuously and in close conjunction with the statements to which the information relates or under appropriate captions of prominence that shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the context of the advertisement so as to be confusing or misleading.

Section 8.~~[Section 7.]~~ Testimonials used in advertisements shall be genuine, represent the current opinion of the author~~[,]~~ be applicable to the policy advertising, and be accurately reproduced. The insurer, in using a testimonial shall make as its own all of the statements contained in the advertisement, and all the advertisement including the statements shall be subject to all of the provisions of this administrative regulation.

Section 9.~~[Section 8.]~~ An advertisement relating to the dollar amounts of claims paid, the number of persons insured, or similar statistical information relating to any insurer or policy shall not be used unless it accurately reflects all of the relevant facts. The advertisement shall not imply that statistics are derived from the policy advertised unless that is the fact.

Section 10.~~[Section 9.]~~ An offer in an advertisement of free inspection of a policy or offer of a premium refund shall not be a cure for misleading or deceptive statements contained in the advertisement.

Section 11.~~[Section 10.]~~ (1) If a choice of the amount of benefits is referred to, an advertisement shall disclose that the amount of benefits provided depends upon the plan selected, and that the premium will vary in conjunction with the amount of the benefits.

(2) If an advertisement refers to various benefits that could be contained in two (2) or more policies, other than group master policies, the advertisement shall disclose that the benefits are provided only through a combination of the policies.

Section 12.~~[Section 11.]~~ An advertisement shall not directly or indirectly make unfair or incomplete comparisons of policies or benefits, or otherwise falsely disparage competitors, policies, services, or business methods.

Section 13.~~[Section 12.]~~ (1) An advertisement that is intended to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed shall not imply licensing beyond those ~~[these]~~ limits.

(2) Advertisements by direct mail insurers shall indicate that the insurer is licensed in a specified state or states only, or is not licensed in a specified state or states, by use of language similar to "This company is licensed only in State A" or "This company is not licensed in State B."

Section 14.~~[Section 13.]~~ The identity of the insurer shall be made clear in all of the insurer's~~[insurers]~~ advertisements. An advertisement shall not use a trade name, service mark, slogan, symbol, or other device that has the capacity and tendency to mislead or deceive as to the true identity of the insurer.

Section 15.~~[Section 14.]~~ An advertisement of a particular policy shall not state or imply that prospective policyholders become group or quasi-group members, and as members, enjoy special rates or underwriting privileges, unless that is the fact.

Section 16.~~[Section 15.]~~ An advertisement shall not state or imply that a particular policy or combination of policies is an introductory, initial, or special offer, and that the applicant shall receive advantages by accepting the offer, unless that is the fact.

Section 17.~~[Section 16.]~~ (1) An advertisement shall not state or imply that an insurer or a policy has been approved, or that an insurer's financial condition has been examined and found to be satisfactory by a governmental agency, unless that is the fact.

(2) An advertisement shall not state or imply that an insurer or a policy has been approved or endorsed by any individual, group of individuals, society, association, or other organization, unless that is the fact.

Section 18.~~[Section 17.]~~ An advertisement shall not contain untrue statements with respect to the time within which claims are paid, or statements that imply that claim settlements will be liberal or generous beyond the terms of the policy.

Section 19.~~[Section 18.]~~ An advertisement shall not contain statements that are untrue in fact or by implication misleading with respect to the insurer's assets, corporate structure, financial standing, age, or relative position in the insurance business.

Section 20.~~[Section 19.]~~ (1) Each insurer shall maintain at its home or principal office a complete file containing every printed, published, or prepared advertisement of individual policies, and typical printed, published, or prepared advertisements of blanket, franchise, and group policies, disseminated in this or any other state whether or not licensed in the other state, with a notation attached to each advertisement that shall indicate the manner and extent of distribution and the form number of any policy advertised. The file shall be subject to regular and periodical inspection by the Department of Insurance. All advertisements shall be maintained by the insurer for a period of not less than three (3) years.

(2) A life or health ~~[Each]~~ insurer required to file an annual statement in accordance with KRS 304.3-240, that issues any policy as described in Section 3(2) of this administrative regulation ~~[which is now or which becomes subject to the provisions of this administrative regulation]~~, shall file with the Department of Insurance, together with its annual statement, a certificate executed by an authorized officer of the insurer stating that to the best of his or her knowledge, information, and belief, the advertisements that were disseminated by the insurer during the preceding statement year complied or were made to comply in all respects with the provisions of KRS Chapter 304.

Section 21.~~[Section 20.]~~ ~~[(1) The provisions of this administrative regulation shall not be expressly limited to a particular type of insurance and shall be applied to all insurance on subjects of risk located in or to be performed in Kentucky.~~

~~(2)]~~ Any person, firm, corporation, or association who knowingly aids and abets an insurer in the violation of this administrative regulation or the applicable provisions of the Insurance Code shall be subject to the penalties established by KRS Subtitle 304.99.

Section 22. Incorporation by Reference. (1) The following material is incorporated by reference:

(2) Form 440, "Certificate on Advertising- Accident and Health", 10/2021 edition.

(3) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department of Insurance, Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site at: <https://insurance.ky.gov/ppc/CHAPTER.aspx>.

SHARON P. CLARK, Commissioner

RAY A. PERRY, Secretary

APPROVED BY AGENCY: October 13, 2021

FILED WITH LRC: October 14, 2021 at 3:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on December 21, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on December 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Abigail Gall, Regulations Coordinator, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides guidelines and requirements for advertising methods of insurance products and policies.

(b) The necessity of this administrative regulation: This proposed regulatory amendment is needed to ensure that insurance advertisements made to the public are of sound measure and in good faith, and that they do not contain deceitful advertising tactics.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the Commissioner of Insurance shall make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation clarifies the minimum standards for advertising as set forth in KRS 304.12-010 and 304.12-020.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The proposed amendments to this administrative regulation address exceptions to the requirements set out in Section 19. In many states, property or casualty insurers are not required to file a certificate of advertising with an annual statement. This proposed amendment would make the Department's regulation consistent with that practice, and will also ensure consistency with the Model Law upon which this regulation is based (which is limited in scope to life and health lines, as it

relates to accident and sickness policies). The amendments also reflect the newly incorporated Form 440.

(b) The necessity of the amendment to this administrative regulation: This proposed regulatory amendment is needed to alleviate confusion between the regulatory requirements and the Department's policies and procedures.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the referenced statutes by setting forth advertisement filing guidelines for life and health insurers. There was previous language that applied to all insurers, but the Department does not require Property & Casualty companies to meet these filing requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The health or life insurers that are required to file annual statements, including advertisement, as well as the department.

(4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Insurers who intend to market insurance products must file with the department prior to marketing, in order to ensure that all advertisements meet the criteria of this regulation, as well as other advertising regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The process set forth in this administrative regulation clarifies a long-standing practice regarding the reporting process. Because insurers have already been complying in this manner, there is no cost to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: Compliance with this regulation will allow insurers to use advertising materials publically.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase of fees will not be necessary because additional personnel is likely unnecessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not directly establish any new fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies to all life and health insurers issuing policies for accident or sickness benefits.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance will be impacted as the implementer of the regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is not expected to generate any revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation is not expected to generate any revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not have a cost to implement in the first year.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not have a cost to administer subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: As the amendments to this administrative regulation clarify an existing process, this administrative regulation will not have a fiscal impact on the Department of Insurance.